

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

E.L. GARDNER, A DIVISION OF BARDON, INC.^{1/}

Employer

and

DRIVERS, CHAUFFEURS AND HELPERS, LOCAL 639,
a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO^{2/}

Petitioner

Case 5-RC-15041

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{3/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{4/}
3. The Petitioner involved claims to represent certain employees of the Employer.^{5/}
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{6/}

All ready mix drivers, dump truck drivers, tanker drivers, low boy drivers, batchers, mechanical and maintenance employees including parts employees and plant loader operators employed by the Employer at its 1268 Cronson Boulevard, Crofton, Maryland and 2100 Hudson Street, Annapolis, Maryland locations, excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for

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cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

**DRIVERS, CHAUFFEURS AND HELPERS, LOCAL 639,
a/w
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **July 12, 2000.**

Dated June 28, 2000

at Baltimore, Maryland

/s/ LOUIS J. D'AMICO
Regional Director, Region 5



1/ The name of the Employer appears as amended at the hearing.

2/ The name of the Union appears as amended at the hearing.

3/ At the hearing, the Employer moved that this case be transferred to the Board for decision claiming that there was bias against the Employer as the undersigned would not approve a stipulated election agreement with an election date of July 28, 2000. The petition in this case was filed on June 9, 2000, and the hearing was originally set for June 19, 2000. Pursuant to a request by the Employer, with agreement of the Union, the hearing was rescheduled for June 22, 2000. The Employer argued at the hearing that it is prejudiced by an election date earlier than July 28, due to a shortened work week the week of July 4, as it needs time to express its views on the union campaign. There are no issues presented in this hearing, other than the date of the election which is not a matter appropriate for the taking of evidence at a hearing. The request to transfer this case to the Board for decision is denied. Furthermore, as there are no issues regarding the scope of the unit and related representational issues the Hearing Officer's ruling that no briefs were to be filed was proper.

4/ E.L. Gardner, a division of Bardon, Inc. (the Employer), a Delaware corporation with an office and place of business in Greenbelt, Maryland, is engaged in the production and distribution of concrete, stone and other building materials. During the past twelve months, a representative period, the Employer, in conducting its business operations, purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Maryland.

5/ The parties stipulated that the Drivers, Chauffeurs and Helpers, Local 639, affiliated with International Brotherhood of Teamsters, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended.

6/ At the hearing the parties stipulated that the following employees constitute an appropriate unit for purposes of collective bargaining:

All ready mix drivers, dump truck drivers, tanker drivers, low boy drivers, batchers, mechanical and maintenance employees including parts employees and plant loader operators employed by the Employer at its 1268 Cronson Boulevard, Crofton, Maryland and 2100 Hudson Street, Annapolis, Maryland locations, excluding all other employees, guards and supervisors as defined in the Act.

There are approximately 104 employees in the stipulated unit and there does not appear to be any history of collective bargaining.